

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

FILED 10 MAR 02 08:25AM DCP-ORP

**TOO MARKER PRODUCTS, INC.,**  
et al.,

Plaintiffs,

No. CV 09-1013-PK

v.

OPINION AND ORDER

**SHINHAN ART MATERIALS, INC.,**  
et al.,

Defendants.

**MOSMAN, J.,**

On February 9, 2010, Magistrate Judge Papak issued Findings and Recommendation ("F&R") (#64) in the above-captioned case recommending that I: (1) GRANT defendants' motion to dismiss (#35) plaintiffs' declaratory judgment claims (Counts IV, V, and VI) with leave for plaintiffs to amend; (2) DISMISS plaintiffs' patent misuse claim (Count VII) with prejudice; and (3) GRANT defendants' motion to dismiss the trademark and unfair competition claims (Counts I, II, and III) against defendant Han with leave for plaintiffs to amend. No objection to the F&R was filed.

**DISCUSSION**

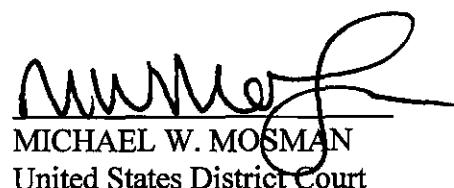
The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but

retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Papak's recommendation, and I ADOPT the F&R (#64) as my own opinion. I GRANT defendants' motion to dismiss (#35) plaintiffs' declaratory judgment claims (Counts IV, V, and VI) with leave for plaintiffs to amend. I DISMISS plaintiffs' patent misuse claim (Count VII) with prejudice. I also GRANT defendants' motion to dismiss the trademark and unfair competition claims (Counts I, II, and III) against defendant Han with leave for plaintiffs to amend.

IT IS SO ORDERED.

DATED this 2 day of March, 2010.



MICHAEL W. MOSMAN  
United States District Court